

**OUTREACH PLAN**  
**MEXICAN SPOTTED OWL CRITICAL HABITAT PROPOSED RULE**  
*(Reopening proposal 11/18/2003)*

**Issue:** The court has ordered the Service to issue a new critical habitat designation for the Mexican Spotted Owl and is using its previous proposal of July 21, 2000. The Service will solicit comments on that proposal and use it to develop a final rule. An Environmental Assessment and an Economic Analysis will be prepared.

**Basic facts about the owl:**

- The Mexican spotted owl is a medium-sized bird with dark eyes, dark to chestnut brown coloring, whitish spots on the head and neck, and white mottling on the abdomen and breast. The species inhabits the Southern Rocky Mountains in Colorado and the Colorado Plateau in southern Utah, southward through Arizona, New Mexico, and western Texas, and in Mexico along the Sierra Madre Occidental and Oriental to the mountains at the southern end of the Mexican Plateau.
- The Mexican spotted owl is threatened by destruction and modification of habitat caused by the use of and the rate of even-aged timber harvest methods and wildfires.
- A recovery plan has been developed for the species.

**History**

On February 14, 1994, a lawsuit was filed for failure to designate critical habitat for the owl (Dr. Robin Silver, et al. v. Bruce Babbitt, et al., CIV-94-0337-PHX-CAM). On October 6, 1994, the Court ordered us to ...publish a proposed designation of critical habitat, including economic exclusion pursuant to 16 U.S.C. Sec. 1533(b)(2), no later than December 1, 1994, [and] publish its final designation of critical habitat, following the procedure required by statute and Federal regulations for notice and comment, by submitting the final rule to the Federal Register no later than May 27, 1995. Under an extension granted by the court, we issued the proposed rule to designate critical habitat on December 7, 1994 (59 FR 63162).

We prepared a draft economic analysis, and published a notice of its availability in the Federal Register on March 8, 1995 (60 FR 12728; 60 FR 12730). We published a final rule designating critical habitat for the Mexican spotted owl on June 6, 1995 (60 FR 29914).

In 1996, the Tenth Circuit Court of Appeals in Catron County Board of Commissioners v. United States Fish and Wildlife Service, 75 F.3d 1429, 1439 (10<sup>th</sup> Cir. 1996), ruled that the Service had to comply with the National Environmental Policy Act (NEPA) before designating critical habitat for two desert fish, the spikedace and loach minnow. In addition, a Federal district court in New Mexico later set aside the final rule designating critical habitat for the owl and forbade the Service from enforcing critical habitat for the owl (Coalition of Arizona-New Mexico Counties for Stable Economic Growth v. U.S. Fish and Wildlife Service, No. 95-1285-M Civil). As a result of these court rulings, we removed the critical habitat designation for the owl from the Code of Federal Regulations on March 25, 1998 (63 FR 14378).

On March 13, 2000, the United States District Court for the District of New Mexico, (Southwest Center for Biological Diversity and Silver v. Babbitt and Clark, CIV 99-519 LFG/LCS-ACE), ordered us to propose critical habitat within four months of the courts order, and to complete and publish a final designation of critical habitat for the Mexican spotted owl by January 15, 2001. On July 21, 2000, we published a proposal to designate critical habitat for the Mexican spotted owl in Arizona, Colorado, New Mexico, and Utah, mostly on Federal lands (65 FR 45336). During this 60-day comment period, we held six public hearings on the proposed rule. On February 1, 2001 (66 FR 8530), we issued the final rule designating critical habitat for the owl. The final rule excluded all National Forest Service lands in Arizona and New Mexico and certain tribal lands. On August 27, 2001, the Center for Biological Diversity filed a complaint challenging the Service's decision to exclude these lands from the final designation.

On January 13, 2003, the United States District Court for the District of Arizona, (Center for Biological Diversity et al. v. Secretary for the Department of Interior, Civ. No. 01-409 TUC DCB), ruled that our final rule designating critical habitat for the owl violated the Act, as well as the Administrative Procedure Act and cannot stand. The court ordered the Service to re-propose critical habitat within three months and finalize within six months from the date of the order. The court also stated that the current critical habitat designation for the owl shall remain in effect and be enforced until such time as the Service publishes its final designation. In a subsequent order, on February 18, 2003, the original deadlines were extended to allow until October 13, 2003, to re-propose critical habitat and until April 13, 2004, to publish a final designation of critical habitat.

In August 2003, the Service filed a declaration with the court seeking a stay from the court's January 13, 2003, order and an extension of time to complete the redesignation. On October 10, 2003, the court ruled that it would permit a limited extension and ordered the parties to meet and confer within 15 days of the order to prepare a reasonable timeline for compliance with the January 13, 2003, order. (Timeline not yet available.)

**Communication Goals:** Critical habitat is a tool under the Endangered Species Act that, when combined with other tools, can help to recover a threatened species.

**Message:** Explain that the July 2001 proposal is being used to prepare a new final rule. The difference between the current designation and the proposal is the possible inclusion of Forest and Tribal lands in New Mexico and Arizona. Lands may be deleted from the proposal if it is found that they do not meet the criteria of critical habitat; however, land cannot be added at this point.

**Interested parties:** States of New Mexico, Arizona, Colorado, and Utah, Forest Service, National Park Service, Bureau of Land Management, Mines and Indian Affairs, Department of Defense and Department of Energy, affected Tribes, affected City and County governments, Federal and State elected officials, cattle grazing associations and the Center for Biological Diversity.

**Key Date:** Proposal will be published on Nov. 18 with comments due December 18, 2003.

**Strategy:** There are no public hearings scheduled for the reopening of the comment period. (There may be hearings when the economic analysis and the environmental assessment are complete but it depends on deadlines that are yet to be determined by the court.)

The news release will be sent to congressionals the day before it is published in the Federal Register and to the media the day of publication. It will be mailed to interested parties.

<u>Materials</u>	<u>Yes/No</u>	<u>Prepared By</u>
<b>Required:</b>		
News release	Yes	R2 EA
Questions and answers	Yes	R2 EA
Key contact table	Yes	NMESFO
<b>Optional:</b>		
Photo (species picture)	Yes	NMESFO
Maps	Yes	Region 2 ES